

TTAB

**UNITED STATES PA1
OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Mailed: September 23, 2006

PETER E. BROADBENT, JR.
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Cancellation No. 92046357
Reg. No. 2485231

J. ANDREA PARK
ALTHEIMER & GRAY
10 S WACKER DR STE 4000
CHICAGO IL, 60606

ECPI COLLEGES, INC

V.

Education Corporation of America

Shelley Jamison, Legal Assistant

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12,



10-16-2006

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #30

2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: 10/13/2006

Discovery period to close: 4/11/2007

30-day testimony period for party
in position of plaintiff to close: 7/10/2007

30-day testimony period for party
in position of defendant to close: 9/8/2007

15-day rebuttal testimony period
for plaintiff to close: 10/23/2007

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the

Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

ESTTA Tracking number: **ESTTA96601**

Filing date: **08/28/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	ECPI Colleges, Inc.		
Entity	Corporation	Citizenship	Virginia
Address	5555 Greenwich Road Suite 300 Virginia Beach, VA 23462 UNITED STATES		

Correspondence information	Peter E. Broadbent, Jr., Esquire Christian & Barton, L.L.P. 909 East Main Street Suite 1200 Richmond, VA 23219 UNITED STATES pbroadbent@cblaw.com Phone:804-697-4109
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Registration Subject to Cancellation

Registration No	2485231	Registration date	09/04/2001
Registrant	Education Corporation of America 65 Bagby Drive, Suite 100 Birmingham, IL 35209 UNITED STATES		
Goods/Services Subject to Cancellation	Class 041. First Use: 2000/08/01 , First Use In Commerce: 2000/08/01 Goods/Services: educational services, namely, conducting seminars and courses of instruction in the field of food preparation		

Attachments	0453_001.pdf (3 pages)(84197 bytes)
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Signature	/Peter E. Broadbent, Jr./
Name	Peter E. Broadbent, Jr., Esquire
Date	08/28/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 2,485,231
For the mark CULINARD THE CULINARY INSTITUTE OF VIRGINIA COLLEGE
Date registered September 4, 2001

(Name of petitioner) ECPI Colleges, Inc.

v.

(Name of registrant) Educational Corporation of America

PETITION TO CANCEL

ECPI COLLEGES, INC.,
Petitioner
a Virginia corporation
5555 Greenwich Road, Suite 300
Virginia Beach, VA 23462

To the best of petitioner's knowledge, the name and address of the current owner
("Registrant") of the registration are:

Educational Corporation of America
65 Bagby Drive, Suite 100
Birmingham, IL 35209

The above-identified petitioner believes that it will be damaged by the above-identified
registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner, through its wholly-owned subsidiary, Culinary Institute of Virginia, LLC, is preparing to offer educational services in the field of the culinary arts, which services will be in the same line of business as those offered by registrant under the registration, and petitioner is preparing to use the mark "Culinary Institute of Virginia" to describe the services which petitioner will provide through its subsidiary.

2. Petitioner has filed an application for federal trademark registration of "Culinary Institute of Virginia", S/N 76/655454, based upon its bona fide intent to use that mark, but has received a USPTO office action refusing registration of petitioner's mark based on the existing registration.

3. Upon information and belief, the existing mark "Culinard The Culinary Institute of Virginia College" is not entitled to registration since only the word "Culinard" (separately registered by registrant as Reg. 2,567,380) is being used in a trademark sense, and the phrase "Culinard The Culinary Institute of Virginia College" is not being used as a trademark to describe registrant's services, but is only being used only in a tradename sense to identify the business. If there ever was any use of "Culinard The Culinary Institute of Virginia College" in a trademark sense by registrant, upon information and belief, no such trademark use has occurred in the last three years, and the registered trademark has been abandoned by registrant through nonuse.

4. Upon information and belief, the existing mark "Culinard The Culinary Institute of Virginia College" is primarily geographically deceptively misdescriptive, since no courses in food preparation are offered in the Commonwealth of Virginia by registrant, nor are registrant's courses primarily focused on cuisine of the Commonwealth of Virginia. Upon information and belief, the registrant of the existing mark, "Culinard The Culinary Institute of Virginia College", at one time offered food preparation educational services in Virginia, but through its own actions, ceased providing those educational services in Virginia, and presently offers its food preparation educational services only in Birmingham, Alabama, with no material association of its services described by the mark to the Commonwealth of Virginia.

5. Upon information and belief, the existing mark "Culinard The Culinary Institute of Virginia College" is geographically deceptive, since no courses in food preparation are offered in the Commonwealth of Virginia by registrant, nor are registrant's courses primarily focused on cuisine of the Commonwealth of Virginia. Upon information and belief, the registrant of the existing mark, "Culinard The Culinary Institute of Virginia College", at one time offered food preparation educational services in Virginia, but through its own actions, ceased providing those educational services in Virginia, and presently offers its food preparation services only in Birmingham, Alabama, with no material association of its services described by the mark to the Commonwealth of Virginia.

6. The use of the word "Virginia" as part of registrant's existing mark is primarily geographically deceptively misdescriptive, and geographically deceptive, of its services in that it leads the consuming public to believe that registrant's services are offered in the Commonwealth of Virginia, or focused on cuisine of the Commonwealth of Virginia, when in fact no such geographic association exists.

Date: August 28, 2006

ECPI COLLEGES, INC.
By Counsel
Peter E. Broadbent, Jr.
Christian & Barton, LLP
909 East Main Street
Suite 1200
Richmond, Virginia 23219
Virginia State Bar No. 15962



United States Patent and Trademark Office

Commissioner for Trademarks

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